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and Meral Unlu, as Trustees of the Unlu
Revocable Trust dated February 13, 2016

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ISMAIL JAN UNLU and MERAL
UNLU, as Trustees of the Unlu
Revocable Trust dated February 13, 2016,

Plaintiff,

v.

KI JOON LEE, individually and as
Trustee of the 2001 Ki Joon Lee And
Chong Ae Lee Revocable Trust dated
October 24, 2001; CHONG AE LEE
individually and as Trustee of the 2001
Ki Joon Lee And Chong Ae Lee
Revocable Trust dated October 24, 2001;
DRAEGER'S SUPERMARKETS, INC.,
a California Corporation; and DOES 1
through 25, inclusive,

Defendants.

Case No.:

COMPLAINT FOR:

- 1) Cost Recovery Under CERCLA § 107(a);
- 2) Declaratory Relief Under CERCLA
- 3) Cost Recovery Under the HSAA
- 4) Continuing Nuisance
- 5) Continuing Trespass
- 6) Equitable Indemnity
- 7) Declaratory Relief Under State Law

[JURY TRIAL DEMANDED]

1 COME NOW Plaintiffs ISMAIL JAN UNLU and MERAL UNLU, as Trustees
2 of the Unlu Revocable Trust dated February 13, 2016 (hereinafter, “Plaintiffs” or
3 “Trust”), and allege upon knowledge as to their own acts, and upon information and
4 belief as to the acts of all others, as follows:

5 **STATEMENT OF ACTION**

6 1. Plaintiffs bring this action under 42 U.S.C. § 9607 *et seq.* of the
7 Comprehensive Environmental Response, Compensation, and Liability Act of 1980
8 (“CERCLA”) and various other federal and state statutory and common law
9 theories for, among other relief, the recovery of costs incurred by Plaintiffs in
10 response to the release and threatened release of Hazardous Substances onto certain
11 real property located at 376 First Street in Los Altos, California (“Unlu Site”),
12 which at all relevant times was owned by Plaintiffs. Plaintiffs are informed and
13 believe that Defendants, by and through their ownership of and/or dry cleaning
14 operations on certain real property, have damaged Plaintiffs by causing sudden and
15 accidental releases and/or spills of chemicals at their respective properties, which in
16 turn have caused environmental contamination to exist in the soil and/or
17 groundwater underlying the Unlu Site.

18 **JURISDICTION AND VENUE**

19 2. This Court has jurisdiction over Plaintiffs’ claims under federal law
20 pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 9613(b).

21 3. This Court has supplemental jurisdiction over the subject matter of
22 Plaintiffs’ other causes of action pursuant to 28 U.S.C. § 1367 because those claims
23 are so related to the federal claims in this action that they form the same case and
24 controversy under Article III of the U.S. Constitution.

25 4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and
26 Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the claims arose out of
27 an actual or threatened release of Hazardous Substances that occurred within this
28 judicial district.

PARTIES

5. Plaintiffs Ismail Jan Unlu and Meral Unlu, as Trustees or their successors, of the Unlu Revocable Trust dated February 13, 2016, at all relevant times resided in Los Altos, California. The Trust was created under the laws of California. The Trust is the current owner of the Unlu Site.

6. Plaintiffs are informed and believe that Defendant KI JOON LEE, individually and as Trustee of the 2001 Ki Joon Lee and Chong Ae Lee Revocable Trust dated October 24, 2001 (“Lee Trust”), is an individual residing in Los Altos, California, County of Santa Clara, and doing business as Los Altos Laundry & Cleaners. Plaintiffs are informed and believe that Mr. Lee owned the real property located at 392 First Street, Los Altos, California (“LAC Site”) and/or operated Los Altos Laundry & Cleaners on the LAC Site between approximately 1958 to the present. Plaintiffs are informed and believe that the Lee Trust has owned the LAC Site from approximately 2001 to the present.

7. Plaintiffs are informed and believe that Defendant CHONG AE LEE, individually and as Trustee of the 2001 Ki Joon Lee and Chong Ae Lee Revocable Trust dated October 24, 2001 (“Lee Trust”), is an individual residing in Los Altos, California, County of Santa Clara, and doing business as Los Altos Laundry & Cleaners. Plaintiffs are informed and believe that Ms. Lee owned the real property located at 392 First Street, Los Altos, California (“LAC Site”) and/or operated Los Altos Laundry & Cleaners on the LAC Site between approximately 1958 to the present. Plaintiffs are informed and believe that the Lee Trust has owned the LAC Site from approximately 2001 to the present. Ki Joon Lee and Chong Ae Lee individually and the Lee Trust are collectively referred to as the “Lees” unless otherwise stated.

8. Plaintiffs are informed and believe that Defendant DRAEGER’S SUPERMARKETS, INC. (“Draeger’s”) is a corporation organized and existing under the laws of California with its principal place of business in the City and

1 County of San Francisco, California. Plaintiffs are informed and believe that
2 Draeger's has owned the real property located at 366 First Street, Los Altos,
3 California ("Draeger's Site") between approximately 2001 to the present. Plaintiffs
4 are informed and believe the Draeger's Site was formerly occupied by a drive-in
5 dry cleaners known as Top Cleaners.

6 9. The true names and capacities of all remaining Defendants, whether
7 individual, corporate, associate or otherwise, are unknown to Plaintiffs and are
8 named herein as DOES 1-25, inclusive. Plaintiffs sue these Defendants by those
9 fictitious names. Plaintiffs are informed and believe, and on that basis allege, that
10 each of the Doe Defendants is in some manner responsible for the injuries and
11 losses suffered by Plaintiffs, and include persons that used, transported, or disposed
12 of, or arranged for the use, transportation or disposal of, Hazardous Substances at,
13 to or from the LAC Site, Draeger's Site, or other sites in the vicinity of the Unlu
14 Site, causing sudden and accidental releases and/or spills of such chemicals which
15 either exist at, or have spread and migrated within the environment toward, the
16 Unlu Site. The names, capacities and relationships of DOES 1 through 25 will be
17 alleged by amendment to this Complaint when those names are known.

18 10. Each of the Defendants identified above shall be collectively hereinafter
19 referred to as "Defendants."

20 11. Whenever it is alleged herein that any act or omission was also done or
21 committed by a specifically named Defendant or Defendants generally, Plaintiffs
22 intend to allege and do allege that the same act or omission was also committed by
23 each and every Defendant named herein, including the DOE Defendants, both
24 separately and in concert or conspiring with the other Defendants. Plaintiffs pray
25 for leave of this Court to amend the Complaint when those names and capacities are
26 ascertained.

DEFINITIONS

12. Disposal or Dispose: As used in this Complaint, the term “Disposal” or “Dispose” shall have the meaning set forth in SWDA § 1004 (3), 42 U.S.C.

6903(3):

[t]he discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or Hazardous Waste into or on any land or water so that such waste or Hazardous Waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

13. Environment: As used in this Complaint, the term “Environment” shall have the meaning set forth in CERCLA § 101(8), 42 U.S.C. § 9601(8):

(A) the navigable waters, the waters of the contiguous zone, and the ocean waters for which the natural resources are under the exclusive management authority of the United States ... and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

14. Facility: As used in this Complaint, the term “Facility” shall have the meaning set forth in CERCLA § 101(9), 42 U.S.C. § 9601(9):

(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works) well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft or (B) any Site or area where a Hazardous Substance has been deposited , disposed of, or placed, or otherwise come to be located.

15. Hazardous Substance: As used in this Complaint, the term “Hazardous Substance” shall have the meaning set forth in CERCLA § 101(14)(B), 42 U.S.C. § 9601(14)(B) and CERCLA § 101(14)(C), 42 U.S.C. § 9601(14) (C), as listed by the

1 USEPA at 40 C.F.R. § 302.4 pursuant to its authority under CERCLA § 102. 42
2 U.S.C. § 9602 and applicable state law.

3 16. Hazardous Waste: As used in this Complaint, the term “Hazardous
4 Waste” shall have the meaning set forth in SWDA § 1004(5), 42 U.S.C. § 6905(5):
5 [a]ny solid waste, or combination of solid wastes, which because of its
6 quantity, concentration, or physical chemical or infectious characteristics
7 may

8 (A) cause or significantly contribute to an increase in mortality or any
9 increase in serious irreversible, or incapacitating reversible illness; or

10 (B) pose a substantial present or potential hazard to human health or
11 the environment when improperly treated, stored, transported, or disposed of,
12 or otherwise managed.

13 Hazardous Waste shall also include the definition of Hazardous Waste as
14 defined by applicable state law and “Solid Waste” as set forth under SWDA §
15 1004(27), 42 U.S.C. § 6903(27), and applicable state law.

16 17. National Contingency Plan: As used in this Complaint, the term
17 “National Contingency Plan” (“NCP”) means the National Oil and Hazardous
18 Substance Pollution Contingency Plan as set forth in 40 C.F.R. Part 300; the
19 Congressionally-mandated plan developed by the EPA that delineates the required
20 procedures for investigating, analyzing remedial alternatives, responding to, and
21 abating the adverse effects of Releases of Hazardous Substances into the
22 Environment.

23 18. Release: As used in this Complaint, the term “Release” shall have the
24 meaning set forth in CERCLA § 101(22), 42 U.S.C. § 9601(22):

25 [a]ny spill, leaking, pumping, pouring, emitting, emptying, discharging,
26 injecting, escaping, leaching, dumping or disposing into the environment
27 (including the abandonment or discharging of barrels, containers, and other
28

1 closed receptacles containing any Hazardous Substance or pollutant or
2 contaminant).

3 19. Response Cost(s): As used in this Complaint, the term “Response
4 Costs” means the costs of “removal” and “remedial actions” of Hazardous
5 Substances and/or Hazardous Wastes, as those terms are defined in CERCLA §
6 101(23) and (24), 42 U.S.C. § 9601(23) and (24), all other costs to respond to
7 Releases of Hazardous Substances, as defined in CERCLA § 101(25), 42 U.S.C. §
8 9601(25). Such costs include, but are not limited to, costs incurred to monitor,
9 assess and evaluate the Release of Hazardous Substances and/or Hazardous Waste
10 as well as costs of removal and Disposal of the Hazardous Substance and/or
11 Hazardous Waste. Such costs also include those incurred in actions to permanently
12 remedy the Release of Hazardous Substances and/or Hazardous Waste, including,
13 but not limited to (1) the storage, confinement, cleanup of Hazardous Substances or
14 Hazardous Waste, (2) the recycling or reuse, diversion, destruction or segregation
15 of reactive wastes, (3) the dredging or excavation, repair or replacement of leaking
16 containers, and (4) any other such action necessary to protect public health, welfare
17 and the Environment. The term “Response Cost” also means any costs and
18 attorneys’ fees incurred in enforcing either removal or remedial actions or
19 CERCLA’s scheme for liability, compensation and cost-recovery, set forth in
20 CERCLA § 102(25), 42 U.S.C. § 9601(25).

21 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

22 20. Plaintiffs are the present owners of the Unlu Trust Site. The property
23 currently consists of a restaurant and parking lot.

24 21. Plaintiffs intend to develop the property. The project will consist of
25 demolishing the existing building and constructing a new four-story mixed
26 commercial and residential use building and one and a half levels of below ground
27 parking. The project will further consist of improvements to utilities and public
28 amenities, including sidewalks, immediately surrounding the Unlu Trust Site. The

1 project is part of a larger August 2018 City of Los Altos Downtown Vision Plan
2 which is a long-term planning document that outlines development planning to
3 enhance the prominence of the City's downtown area.

4 22. In or about January, 2020, Plaintiffs initiated the development review
5 process with the City of Los Altos.

6 23. In or about June, 2021, Plaintiffs prepared and submitted a Soil
7 Management Plan to the City of Los Altos as part of the redevelopment process.
8 Investigation associated with the redevelopment efforts identified that the Unlu Site
9 has allegedly been impacted by the presence of chlorinated solvents, including
10 tetrachloroethylene ("PCE"), trichloroethylene ("TCE"), as well as other solid and
11 Hazardous Wastes, at concentrations that exceed the regional screening levels for
12 industrial soil as established by the State of California and Environmental
13 Protection Agency. Plaintiffs are informed and believe that the vertical extent of the
14 contaminants may also extend to the shallow groundwater at levels exceeding their
15 applicable Maximum Contaminant Level ("MCL") for drinking water.

16 24. Chlorinated solvents and many of its degradation products are closely
17 regulated by the state of California and the federal government. PCE and TCE are
18 each a "Hazardous Substance" as that term is defined in federal law, 42 U.S.C. §
19 9601(14). They are "solid wastes" and "Hazardous Wastes" as those terms are
20 defined in federal law, 42 U.S.C. § 6903(5), (27).

21 25. PCE is an industrial chlorinated solvent that was widely used in the
22 dry cleaning industry since the 1940s.

23 26. PCE degrades to TCE, which in turn degrades to DCE, which in turn
24 degrades to vinyl chloride, which in turn degrades to ethene, and finally to carbon
25 dioxide, water, and free chlorine. PCE and its breakdown products are manmade
26 chemicals and are not naturally occurring in the environment. The International
27 Agency for Research on Cancer has classified PCE and TCE as Group 2A
28 carcinogens, which means that PCE and TCE are probable carcinogens to humans.

1 27. As a toxic, long-lived, volatile, chlorinated hydrocarbon and likely
2 carcinogen, PCE and many of its degradation products are closely regulated by the
3 state of California and the federal government.

4 28. Because of its mobility in groundwater, its toxicity to humans at low
5 levels, and its density (which causes it to sink below the water table), PCE in the
6 environment can be difficult and expensive to cleanup.

7 29. Plaintiffs' property is flanked on both sides by two former dry
8 cleaners—Top Cleaners and Los Altos Cleaners. Plaintiffs are informed and believe
9 these former dry cleaners are responsible for the commingled plume of
10 contamination that exists beneath Plaintiffs' property.

11 **The Lees' Los Altos Cleaners Site Caused And/Or Contributed To The**
12 **Environmental Contamination At The Unlu Site**

13 30. Plaintiffs are informed and believe that the Lees owned and/or
14 operated a laundry and dry cleaners on the LAC Site from approximately 1958 to
15 2017. The LAC Site is, and at all material times was, a "facility" as defined in
16 CERCLA, 42 U.S.C. § 9601(9).

17 31. Plaintiffs are informed and believe that Lees' operations included the
18 generation and storage of chlorinated solvents and other Hazardous Substances at
19 the LAC Site, including but not limited to PCE.

20 32. Plaintiffs are informed and believe, and thereon allege, that in or about
21 March, 2017, a Limited Environmental Site Assessment was performed by Environ
22 Phase Consulting. The investigation consisted of five borings was conducted near
23 the former and current dry cleaning machine locations, storage drum, and floor
24 drain. Plaintiffs are informed and believe, and thereon allege, that PCE was
25 detected in 4 of the 5 soil samples and all soil vapor samples in concentrations
26 ranging from 6,000 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 47,000 $\mu\text{g}/\text{m}^3$ far
27 exceeding residential levels.
28

33. Plaintiffs are informed and believe, and thereon allege, that in or about July, 2017, a further Site Assessment was performed by Applied Water Resources. PCE was detected in all soil vapor samples at concentrations ranging 1,600 µg/m³ to 60,900 µg/m³.

34. Plaintiffs are informed and believe that, at various times between 1958 to the present, the Lees intentionally, willfully, negligently, suddenly and accidentally caused or contributed to the presence of Hazardous Substances, Hazardous Waste, and/or solid waste in the environment, including soil, land, subsurface strata, air, vapor, groundwater, surface water, and the waters of the state of California, at the LAC Site by virtue of their past or present handling, storage, treatment, transportation, generation, release, or disposal of Hazardous Substances, Hazardous Waste, and/or solid waste in the environment.

35. Plaintiffs are informed and believe that the Lees caused one or more sudden and accidental spills and releases, and other discharges, including intentional discharges, of said chlorinated solvents and other Hazardous Substances into the environment. These Hazardous Substances, Hazardous Waste, and/or solid wastes have continued to spread and migrate within the environment toward and onto the Unlu Site.

36. Plaintiffs are informed and believe that the Lees have been issued a directive by the County of Santa Clara to conduct a remedial investigation and remove the alleged contaminants affecting the LAC and Unlu Sites. Plaintiffs are informed and believe that the Lees have failed to complete the cleanup or obtain closure as directed.

The Draeger's Site Caused And/Or Contributed To The Environmental Contamination At The Unlu Site

37. Plaintiffs are informed and believe that Top Cleaners operated a dry cleaners on the Draeger's Site from at least 1986 until 2001. Plaintiffs are informed and believe that Draegers has owned the property from approximately 2001 to the

1 present. The Draeger's Site is, and at all material times was, a "facility" as defined
2 in CERCLA, 42 U.S.C. § 9601(9).

3 38. Plaintiffs are informed and believe that dry cleaning operations on the
4 Draeger's Site included the generation and storage of chlorinated solvents and other
5 Hazardous Substances, including but not limited to PCE. The Bay Area Air Quality
6 Management District 2000 Annual Report identified Top Cleaners as using
7 approximately 430 lbs. of PCE per year as of 2001.

8 39. Plaintiffs are informed and believe, and thereon allege, that in or about
9 February, 2022, soil vapor probes were placed alongside the Draeger's Site to
10 evaluate whether a release of PCE occurred. Analytical results show extraordinarily
11 high concentrations of PCE in excess of 49,000 $\mu\text{g}/\text{m}^3$ in the vicinity of where
12 Plaintiffs are informed and believe the dry cleaning machine was located. Plaintiffs
13 are informed and believe that the sampling indicates a release from the Draeger's
14 Site is impacting the Unlu Site.

15 40. Plaintiffs are informed and believe that, at various times between at
16 least 1986 to 2001, the Top Cleaners intentionally, willfully, negligently, suddenly
17 and accidentally caused or contributed to the presence of Hazardous Substances,
18 Hazardous Waste, and/or solid waste in the environment, including soil, land,
19 subsurface strata, air, vapor, groundwater, surface water, and the waters of the state
20 of California, at the Draeger's Site by virtue of the past or present handling, storage,
21 treatment, transportation, generation, release, or disposal of Hazardous Substances,
22 Hazardous Waste, and/or solid waste in the environment.

23 41. Plaintiffs are informed and believe that Top Cleaners caused one or
24 more sudden and accidental spills and releases, and other discharges, including
25 intentional discharges, of said chlorinated solvents and other Hazardous Substances
26 into the environment. These Hazardous Substances, Hazardous Waste, and/or solid
27 wastes have continued to spread and migrate within the environment toward and
28 onto the Unlu Site.

1 42. Plaintiffs are informed and believe that Defendant Draeger's, as the
2 current owner of the property, has an obligation to immediately conduct a remedial
3 investigation and remove the alleged contaminants affecting the Draeger's and
4 Unlu Sites. Plaintiffs are informed and believe that Draeger's has failed to complete
5 the cleanup or obtain closure as directed.

6 **Plaintiffs Have Suffered Damages As A Result Of Defendants' Conduct**

7 43. Plaintiffs are informed and believe that Defendants, by and through
8 their conduct and/or omissions, have caused damage to Plaintiffs and Plaintiffs'
9 property.

10 44. As a result of and in response to Defendants' releases of Hazardous
11 Substances, Hazardous Wastes, and/or solid wastes and/or failure to mitigate the
12 releases, Plaintiffs have further incurred Response Costs to address to the
13 contamination and will continue to incur Response Costs for monitoring,
14 investigation and remediation of the soil, soil vapor, groundwater, and/or indoor air
15 associated with the releases and threatened releases of Hazardous Substances and
16 Wastes at and emanating from the LAC Site and Draeger's Site. Plaintiffs have
17 incurred such necessary Responses Costs consistent with the NCP, 40 C.F.R.
18 section 300.

19 45. Defendants' conduct has further damaged Plaintiffs by reducing the
20 property value of the Unlu Site and subjecting Plaintiffs to potential liability under
21 state and federal environmental laws.

22 46. Defendants' conduct has further damaged Plaintiffs as the
23 redevelopment of the property has been stalled due to the finding of Hazardous
24 Substances beneath the property. The City of Los Altos has refused to approve the
25 project unless and until the environmental contamination is addressed.

26 47. Plaintiffs have not contributed in any way to the alleged presence of
27 Hazardous Substances on or at the Unlu Site.
28

48. The alleged presence of Hazardous Substances on or at the Unlu Site presents an imminent and substantial endangerment to public health and environment.

49. By letter dated June 1, 2022, Plaintiffs provided notice under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”) to the Lee Defendants, as required by RCRA § 7002(b)(2)(A), 42 U.S.C. § 6972(b)(2)(A), in connection with Plaintiffs’ RCRA claims.

50. Plaintiffs are in the process of providing notice under RCRA with respect to the remaining Defendants and will filing an amended complaint including RCRA claims after the notice requirement has been satisfied.

FIRST CAUSE OF ACTION

(Cost Recovery - CERCLA § 107(a))

(All Plaintiffs Against All Defendants)

51. Plaintiffs reallege and incorporate by reference the allegations set forth above and below, inclusive, as though set forth in full herein.

52. CERCLA §107(a), 42 U.S.C. § 9607(a), provides as follows:

1. the owner and operator of a vessel or a facility,
2. any person who at the time of disposal of any Hazardous Substance owned or operated any facility at which such Hazardous Substances were disposed of,
3. any person who ... arranged for disposal or treatment ... of Hazardous Substances ... at any facility...
4. ...from which there is a release, or a threatened release which causes the incurrence of response costs, of a Hazardous Substance, shall be liable for-

- B. any other necessary costs of response incurred by any other person consistent with the national contingency plan; ...

1 53. Plaintiffs have, at the relevant times mentioned herein, been the
2 owners of the Unlu Site. The Unlu Site, LAC Site, and Draeger's Site is each a
3 "facility," as that term is defined in CERCLA § 101(9), 42 U.S.C. § 9601(9).

4 54. Defendants, and each of them, are "covered person/s" pursuant to
5 CERCLA § 101(21), 42 U.S.C. § 9601(21). Defendants were "owners" or
6 "operators" of their respective facilities, exercised control over and managed their
7 properties, and determined and implemented the policies and procedures by which
8 they operated.

9 55. Plaintiffs are informed and believe that Defendants used, processed,
10 produced, stored, treated, and/or generated Hazardous Substances in the course of
11 their operations at their respective facilities.

12 56. Plaintiffs are informed and believe that a sudden and accidental
13 "Release" or threatened Release of "Hazardous Substances," as those terms are
14 defined in CERCLA §§ 101(22), (14), 42 U.S.C. §§ 9601(22), (14), has occurred,
15 and may be continuing to occur, on, under, from and/or in the vicinity of, the LAC
16 Site onto the Unlu Site as a result of Lees' spilling, leaking, disposal, and Release
17 of Hazardous Substances in the course of their operations at the LAC Site.

18 57. Plaintiffs are informed and believe that a sudden and accidental
19 "Release" or threatened Release of "Hazardous Substances," as those terms are
20 defined in CERCLA §§ 101(22), (14), 42 U.S.C. §§ 9601(22), (14), has occurred,
21 and may be continuing to occur, on, under, from and/or in the vicinity of, the
22 Draeger's Site onto the Unlu Site, as a result of Draeger's spilling, leaking,
23 disposal, and Release of Hazardous Substances in the course of their ownership
24 and/or operations at the Draeger's Site.

25 58. As a direct and proximate result of the Release(s) of Hazardous
26 Substances that have occurred, and may be continuing to occur, on, under, from,
27 and/or in the vicinity of, the LAC Site and Draeger's Site, Plaintiffs have incurred
28

1 and will continue to incur Response Costs as defined in CERCLA § 101(25), 42
2 U.S.C. § 9601(25) and other damages for the environmental contamination.

3 59. Defendants, and each of them, are responsible persons, as defined in
4 CERCLA § 107(a)(2) and/or (3), 42 U.S.C. § 9607(a)(2) and/or (3), because the
5 disposal and/or releases of Hazardous Substances occurred while each of them
6 operated businesses which used Hazardous Substances and generated Hazardous
7 Waste, and because Defendants arranged for the disposal of Hazardous Substances
8 at the LAC Site and Draeger's Site. Defendants are therefore jointly and severally
9 liable for all Response Costs incurred or to be incurred by Plaintiffs.

10 60. Defendants are each strictly liable, jointly and severally, to Plaintiffs
11 under CERCLA, 42 U.S.C. § 9607(a), for all Response Costs that Plaintiffs have
12 incurred and will incur as a result of the Releases, in an amount that Plaintiffs will
13 prove at trial in this action.

14 61. Plaintiffs did not cause or contribute to, and deny that they are liable
15 for costs incurred as the result of, the alleged release or threatened release of
16 Hazardous Substances at the LAC Site and Draeger's Site. In the interest of an
17 expeditious cleanup and acting in good faith, Plaintiffs have incurred, and will
18 continue to incur, costs to investigate, remove, and remediate the environmental
19 contamination at the Unlu Site. As a direct and proximate result of the releases that
20 have occurred, and may be continuing to occur, on, under, from, and/or in the
21 vicinity of, the LAC Site and Draeger's Site, and the resulting environmental
22 contamination, Plaintiffs have suffered, and/or will suffer, damages as follows:

23 a. Response Costs;

24 b. Damages for injury to, destruction of, and/or loss of, natural resources,
25 including, but not limited to, the reasonable costs of assessing such injury,
26 destruction, or loss; and

27 c. The costs of a health assessment or health effects study and remediation in
28 a total amount that Plaintiffs does not yet know, but no less than \$1 million

1 plus interest at the rate provided by law, and which Plaintiffs will prove at
2 trial in this action.

3 62. The Response Costs that Plaintiffs have incurred, and will continue to
4 incur, are necessary and consistent with the NCP.

5 **SECOND CAUSE OF ACTION**

6 **(Declaratory Relief - CERCLA § 113(g) and 28 U.S.C § 2201, et seq.)**

7 **(All Plaintiffs Against All Defendants)**

8 63. Plaintiffs reallege and incorporate by reference the allegations set forth
9 above and below, inclusive, as though set forth in full herein.

10 64. An actual legal controversy exists between Plaintiffs, on the one hand,
11 and Defendants, on the other hand. Plaintiffs contends that they are entitled to a
12 declaration that Defendants are liable under CERCLA for all past, present, and
13 future response costs and other damages incurred by Plaintiffs in connection with
14 the Unlu Site. Plaintiffs are informed and believe that Defendants contend
15 otherwise.

16 65. Plaintiffs desire and are entitled to a declaration of the parties'
17 respective rights and duties pursuant to CERCLA § 113(g), 42 U.S.C. § 9613(g)
18 and 28 U.S.C. § 2201 *et seq.*, including Defendants' liability to Plaintiffs for past,
19 present and future response, removal and remediation costs incurred and to be
20 incurred by Plaintiffs in implementing the remedial action plan for responding to
21 the Releases of Hazardous Substances and/or Hazardous Waste and adverse
22 environmental consequences at issue, and other penalties and/or damages imposed
23 on Plaintiffs in connection with the Unlu Site.

24 66. No adequate or speedy remedy exists for Plaintiffs in the absence of
25 such a judicial declaration. Substantial costs will be incurred by Plaintiffs over time
26 and after conclusion of this action. Unless declaratory relief is granted, it will be
27 necessary for Plaintiffs to commence many successive actions against Defendants,
28 and each of them, to secure compensation for the costs incurred and damages

1 sustained, thus requiring a multiplicity of suits. A judicial determination of each of
 2 the Defendants' liability to Plaintiffs is therefore necessary and appropriate at this
 3 time in order the Plaintiffs may ascertain their rights against the Defendants.

4 **THIRD CAUSE OF ACTION**

5 **(Cost Recovery Under HSAA)**

6 **(All Plaintiffs Against All Defendants)**

7 67. Plaintiffs reallege and incorporate by reference the allegations set forth
 8 above and below, inclusive, as though set forth in full herein.

9 68. The Carpenter-Presley-Tanner Hazardous Substance Account Act,
 10 California Health & Safety Code § 25300 et seq. ("HSAA"), was enacted to
 11 encourage the expedient cleanup of "hazardous substances" that have been released
 12 into the environment. In furthering this goal, the California Legislature included the
 13 statutory right of indemnity and contribution for those parties who clean up
 14 contaminated properties from those parties who are responsible for the
 15 contamination.

16 69. Health & Safety Code § 25363(d) provides that "[a] person who has
 17 incurred response or corrective costs in accordance with [HSAA] or the federal
 18 [CERCLA, 42 U.S.C. § 9601 et seq.] may seek contribution or indemnity from any
 19 person who is liable pursuant to [HSAA]."

20 70. A "liable person" is defined in section 25323.5(a)(1) of HSAA as
 21 "those persons described in section 107(a) of [CERCLA] (42 U.S.C. Sec.
 22 9607(a))."

23 71. "Those persons described in section 107(a)" of CERCLA include the
 24 owner and operator of a facility, any person who at the time of disposal of any
 25 hazardous substance owned or operated any facility at which hazardous substances
 26 were disposed, and any person who arranged for disposal or treatment of hazardous
 27 substances for transport to a disposal facility. 42 U.S.C. § 9607(a).
 28

1 72. Plaintiffs are each a “person” within the meaning of Health & Safety
2 Code § 25319.

3 73. Defendants are each a “liable person” within the meaning of Health &
4 Safety Code § 25323.5(a)(1) and 42 U.S.C. § 9607(a).

5 74. There have been releases or threatened releases of hazardous
6 substances into the environment at the Site, including at and from equipment at the
7 LAC Site and Top Cleaners Site, including during the time Defendants owned their
8 respective properties.

9 75. As a direct and proximate result of Defendants’ actions that caused or
10 contributed to releases of hazardous substances at the LAC Site and Top Cleaners
11 Site, and onto and beneath the Unlu Site, Plaintiffs have incurred and will continue
12 to incur costs for monitoring and investigation, and removal or remedial actions
13 taken in accordance with Chapter 6.5 commencing with Health & Safety Code §
14 25100 and/or CERCLA. These include, but are not limited to, costs incurred for
15 identification of potentially responsible parties, investigation, testing, site
16 assessment, monitoring, mitigation, removal, and remediation of the contamination.

17 76. Plaintiffs gave the Department of Toxic Substances Control (“DTSC”)
18 notice of the commencement of this action, as required by section 25363(d) of the
19 Health & Safety Code.

20 77. Accordingly, as a direct and proximate result of the actions and
21 omissions of Defendants, as alleged herein, and under strict liability imposed by the
22 HSAA, Plaintiff is entitled to indemnity and contribution from Defendants for the
23 past and future costs of such removal or remedial action, including any work or
24 activities related to such removal or remedial action such as investigation,
25 mitigation, or cleanup and abatement work at the Site.

26
27
28

FOURTH CAUSE OF ACTION

(Continuing Nuisance)

(All Plaintiffs Against All Defendants)

78. Plaintiffs reallege and incorporate by reference the allegations set forth above and below, inclusive, as though set forth in full herein.

79. Plaintiffs have, at the relevant times mentioned herein, been the owners of the Unlu Site.

80. Plaintiffs are informed and believe that a “Release” or threatened release of “Hazardous Substances,” as those terms are defined in CERCLA §§ 101(22), (14), 42 U.S.C. §§ 9601(22), (14), has occurred, and may be continuing to occur, on, under, from and/or in the vicinity of, the Draeger’s Site and LAC Site onto the Unlu Site, as a result of Defendants’ ownership and/or operations at their respective Sites.

81. Plaintiffs are informed and believe that Defendants’ acts and/or omissions, caused, created, maintained, and/or contributed to the environmental contamination at the Unlu Site.

82. Plaintiffs are informed and believe that Defendants, and each of them, have allowed, and continue to allow, the environmental contamination to persist.

83. Defendants’ Releases of Hazardous Substances have unreasonably and substantially interfered with and obstructed Plaintiffs’ free use and enjoyment of the Unlu Site and other rights of private occupancy, constituting a nuisance within the meaning of Cal. Civil Code § 3479, which nuisance is continuing and abatable, by, among other things:

- a. Posing an unreasonable and substantial threat to human health;
- b. Being indecent or offensive to the senses;
- c. Preventing the sale, use, and/or development of the Unlu Site;
- d. Diminishing the fair market value of the Unlu Site;

1 e. Forcing Plaintiffs to incur liability, damages, and/or costs, including
2 attorneys' fees, expenses, and costs, caused by the presence of the
3 environmental contamination.

4 84. Plaintiffs are informed and believe that Defendants knew or should
5 have known that Plaintiffs did not consent to the nuisance.

6 85. Plaintiffs are informed and believe that the environmental
7 contamination can be can be discontinued and/or abated.

8 86. Plaintiffs have notified Defendants that the environmental
9 contamination unreasonably and substantially interferes with Plaintiffs' use and
10 enjoyment of the Unlu Site and demanded that the Defendants, and each of them,
11 discontinue and/or abate the environmental contamination.

12 87. Defendants have failed and refused, and continue to fail and refuse, to
13 discontinue and/or abate the environmental contamination.

14 88. As a direct and proximate result of the acts, omissions, and conduct of
15 Defendants and of the continuing nuisance caused thereby, Plaintiffs have suffered
16 and continue to suffer damages as previously described herein, including other
17 special, consequential, incidental, and general damages to be proven at trial.

18 89. Plaintiffs also request that this Court issue a temporary restraining
19 order, a preliminary injunction, and a permanent injunction requiring the
20 Defendants, and their respective agents, representatives, servants, and employees,
21 and all persons acting by or under their authority or in concert with them, to
22 conduct the necessary environmental remedial investigation and remediation to
23 discontinue and/or abate the environmental contamination.

24 **FIFTH CAUSE OF ACTION**

25 **(Continuing Trespass)**

26 **(All Plaintiffs Against All Defendants)**

27 90. Plaintiffs reallege and incorporate by reference the allegations set forth
28 above and below, inclusive, as though set forth in full herein.

1 91. Plaintiffs have, at the relevant times mentioned herein, been the
2 owners of the Unlu Site.

3 92. Plaintiffs are informed and believe that a “Release” or threatened
4 release of “Hazardous Substances,” as those terms are defined in CERCLA §§
5 101(22), (14), 42 U.S.C. §§ 9601(22), (14), has occurred, and may be continuing to
6 occur, on, under, from and/or in the vicinity of, the Draeger’s Site and LAC Site
7 onto the Unlu Site as a result of Defendants’ ownership and/or operations at their
8 respective Sites.

9 93. Plaintiffs are informed and believe that Defendants, without the
10 consent or knowledge of Plaintiffs, released Hazardous Substances and knew or
11 should have known that any such release would contaminate the soil, soil vapor,
12 groundwater, and indoor air at, beneath, and around the Site; and that unless the
13 release was immediately contained and cleaned up, it would spread and travel
14 through the soil, surface water, and groundwater into adjacent properties and
15 buildings, including the Unlu Site.

16 94. Plaintiffs are informed and believe that Defendants, and each of them,
17 have continually entered, encroached, and intruded upon the Unlu Site without
18 Plaintiffs’ consent by allowing the environmental contamination, for which the
19 Defendants are, and were, responsible, to persist.

20 95. Defendants’ Releases of Hazardous Substances have unreasonably and
21 substantially interfered with and obstructed Plaintiffs’ exclusive possession and
22 control of the Unlu Site.

23 96. Plaintiffs are informed and believe that the environmental
24 contamination can be discontinued and/or abated at a reasonable cost by
25 reasonable means.

26 97. Plaintiffs have notified Defendants that the environmental
27 contamination unreasonably and substantially interferes with Plaintiffs’ use and
28

1 enjoyment of the Unlu Site and demanded that the Defendants, and each of them,
2 discontinue and/or abate the environmental contamination.

3 98. Defendants have failed and refused, and continue to fail and refuse, to
4 discontinue and/or abate the environmental contamination.

5 99. As a direct and proximate result of the acts, omissions, and conduct of
6 Defendants and of the continuing trespass caused thereby, Plaintiffs have suffered
7 and continue to suffer damages as previously described herein, including other
8 special, consequential, incidental, and general damages to be proven at trial.

9 100. Plaintiffs also request that this Court issue a temporary restraining
10 order, a preliminary injunction, and a permanent injunction requiring the
11 Defendants, and their respective agents, representatives, servants, and employees,
12 and all persons acting by or under their authority or in concert with them, to
13 conduct the necessary environmental remedial investigation and remediation to
14 discontinue and/or abate the environmental contamination.

15 **SIXTH CAUSE OF ACTION**

16 **(Equitable Indemnity)**

17 **(All Plaintiffs Against All Defendants)**

18 101. Plaintiffs reallege and incorporate by reference the allegations set forth
19 above and below, inclusive, as though set forth in full herein.

20 102. Plaintiffs are informed and believe that the liability, if any, that
21 Plaintiffs may have to any other person, government or regulatory agency, under
22 any law, regulation, or common law principle, relating to the alleged contamination
23 at and emanating from the Unlu Site, is the proximate cause, in whole or in part, of
24 the acts and omissions of Defendants.

25 103. As a direct and proximate result of spills and other releases of
26 Hazardous Substances as alleged above, Plaintiffs have incurred and will incur
27 Response Costs, beyond their fair share, if any, for investigation, remediation, or
28 other response to the contamination.

104. As between Plaintiffs and Defendants, Defendants are solely responsible for all Response Costs for monitoring, investigation and remediation of the soil, soil vapor, groundwater, and/or indoor air associated with the releases and threatened releases of Hazardous Substances and Wastes at and emanating from their respective Sites, and any other costs associated with the environmental contamination.

105. In the event that Plaintiffs are adjudged liable for any or all relief requested in any judicial or administrative action, arising out of or related to the alleged contamination at and emanating from any Site, brought against Plaintiffs by any persons or entities, public or private, such liability is purely secondary, imputed, or technical.

106. Plaintiffs are entitled to equitable indemnity and/or contribution, including (without limitation) under California Civil Code § 1432, against all costs, arising out of, or relating to the alleged contamination at and emanating from Defendants' Sites, and any other costs he has incurred or will incur in the future.

SEVENTH CAUSE OF ACTION

(Declaratory Relief Under State Law)

(All Plaintiffs Against All Defendants)

107. Plaintiffs reallege and incorporate by reference the allegations set forth above and below, inclusive, as though set forth in full herein.

108. An actual legal controversy exists between Plaintiffs, on the one hand, and Defendants, on the other hand. Plaintiffs contend that they are entitled to a declaration that Defendants are liable for all past, present, and future response costs and other damages incurred by Plaintiffs in connection with the Unlu Site. Plaintiffs are informed and believe that Defendants contend otherwise.

109. Plaintiffs desire and are entitled to a declaration of the parties' respective rights and duties pursuant to Cal. Civil Proc. Code § 1060, including Defendants' liability to Plaintiffs for all Response Costs incurred and those to be

1 incurred by Plaintiffs in implementing the remedial action plan for responding to
 2 the Releases of Hazardous Substances and/or Hazardous Waste and adverse
 3 environmental consequences at issue.

4 110. No adequate or speedy remedy exists for Plaintiffs in the absence of
 5 such a judicial declaration. Substantial costs will be incurred by Plaintiffs over time
 6 and after conclusion of this action. Unless declaratory relief is granted, it will be
 7 necessary for Plaintiffs to commence many successive actions against Defendants,
 8 and each of them, to secure compensation for the costs incurred and damages
 9 sustained, thus requiring a multiplicity of suits. Plaintiffs therefore request a
 10 declaration from the Court setting forth Plaintiffs' and Defendants' liability for
 11 past, present and future response, removal and remediation costs, and other
 12 penalties and/or damages imposed on Plaintiffs in connection with the Unlu Site.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs request that judgment be entered in their favor for
 15 the following:

- 16 1. For all past and future response, removal or remedial action costs incurred
 17 by Plaintiffs, in excess of at least \$1,000,000, the exact amount of which
 18 will be ascertained according to proof;
- 19 2. For a declaration that Defendants are liable under CERCLA for all past,
 20 present, and future response costs and other costs which may be incurred
 21 by Plaintiffs at, or in the vicinity of, the Unlu Site;
- 22 3. For a preliminary and permanent injunction requiring Defendants to
 23 undertake at their sole cost and consistent with the NCP at 40 C.F.R. Part
 24 300, all actions necessary to investigate and abate the nuisance conditions
 25 and endangerments to health or the environment that may be presented by
 26 Defendants' use and disposal of "Hazardous Substances" as alleged
 27 above, including installing treatment systems and implementing
 28

monitoring programs, to prevent further migration of hazardous wastes from each Defendant's Site into and around the Unlu Site;

4. For an order requiring Defendants to undertake at their sole cost all actions necessary to investigate and remediate the alleged contamination;
5. For treble damages pursuant to California Code of Civil Procedure § 732.
6. For compensatory and consequential damages;
7. For an award to Plaintiffs for costs of litigation, including attorneys' fees and expert witness fees pursuant to Civ. Proc. Code §§ 1021.5 and 1021.6;
9. For exemplary damages against Defendants according to proof;
10. For punitive damages against Defendants according to proof;
11. For prejudgment and post-judgment interest;
12. For all costs of suit herein;
13. For such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiffs hereby demand trial by jury of any and all issues so triable.

Respectfully submitted,

DATED: July 6, 2022

Caufield & James, LLP

/s/ Santino M. Tropea

Santino M. Tropea, Esq.
Attorneys for Plaintiff Ismail Jan
Unlu and Meral Unlu Trustees or their
Successor, of the Unlu Revocable
Trust dated February 13, 2016